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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MARJATI WINARTO, Plaintiff and Appellant, v. SATRIJO TJIPTO-MARGO, Defendant and Respondent.	E069576 (Super.Ct.No. HEK1501458) OPINION

APPEAL from the Superior Court of Riverside County. Bradley O. Snell, Judge. Affirmed.

Marjati Winarto, in pro. per; and Holstrom, Block & Parke and Ronald B. Funk for Plaintiff and Appellant.

Westover Law Group, Andrew L. Westover and Morgan Cahill-Marsland for Defendant and Respondent.

Marjati Winarto (mother) appeals from the superior court's denial of her motion to set aside as void a 2005 stipulation and order (2005 order) between her and Satrijo Tjipto-Margo (father) modifying child support, custody, and visitation. She contends that the order is void on its face for two reasons: (1) The trial court did not comply with the statutory requirement of articulating a statement of reasons justifying the child support award, and (2) the child support award is against public policy. We conclude that the order is not void on its face for failure to include the statement of reasons because, by statute, the court may state the reasons either in writing or orally on the record, and the order does not indicate that it was entered without a hearing. We further conclude that the child support award is not void as against public policy. We therefore affirm.

BACKGROUND

A stipulated judgment dissolving the marriage of mother and father was entered in 2002. The couple had one daughter, born in December 1997. Father and mother were awarded joint legal custody, with primary custody awarded to mother. A visitation schedule was set, and father was ordered to pay mother $600 per month in child support.

Three years later, in 2005, father and mother stipulated to modify their judgment of dissolution. Sole legal and physical custody of the child was granted to mother. Mother was allowed to move with the child to New Zealand. Mother was required to bring the child to California once per year to visit with father. Additional visits in California were permitted at mother's sole discretion. Father was allowed to visit the

child in New Zealand at his expense at any time with 30 days advance notice given to mother.

In the 2005 order, child support was modified so that father was responsible for paying monthly support only in the months in which the child visited with father in California. The child support award reads: "In every month wherein [father] exercises a visit with [the child] in California, he shall pay to [mother] child support in the amount of $600.00 for that month, or he shall pay the greater of $600.00 or the cost of the airline ticket for [the child]. In all months wherein [father] does not exercise a visit with [the child] in California, he shall pay no child support to [mother]." The 2005 order further provides: "The parties acknowledge that the above child support orders are in the best interests of the minor children and that they are fully informed of their rights under the Minimum Child Support Standards Act. We make this agreement freely without threat or duress, and the needs of the children will be adequately met under this agreement. The right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code, and no public assistance application is pending." The 2005 order was signed by the parties, their respective attorneys, and the court.

In September 2016, several months after the child graduated from high school at the age of 18, mother moved to set aside the 2005 order under Code of Civil Procedure section 473, subdivision (d), contending that the support award was void because it operated as an improper waiver of all future child support. She sought to have the original 2002 order reinstated and to hold father responsible for monthly support

arrearages of $600 from 2005 through June 2016. Father initially agreed that the 2005 order should be set aside based on his assumption that the court no longer had jurisdiction over child support because the child was 18 years old and a high school graduate. He then amended his responsive declaration and opposed the motion. The trial court denied the motion, and mother timely appealed.

DISCUSSION

The trial court is empowered to set aside a void judgment or order under section 473, subdivision (d), of the Code of Civil Procedure. However, "[a] trial court has no statutory power under section 473, subdivision (d) to set aside a judgment that is not void." (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495-496 (*Cruz*).) In addition, "[o]nce six months have elapsed since the entry of a judgment, 'a trial court may grant a motion to set aside that judgment as void only if the judgment is void on its face.'" (*Id.* at p. 496.) A judgment or order that is void on its face may be attacked directly or collaterally at any time. (*Lee v. An* (2008) 168 Cal.App.4th 558, 563 (*Lee*).) "'A judgment or order is said to be void on its face when the invalidity is apparent upon an inspection of the judgment-roll.'" (*Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1441, quoting *Morgan v. Clapp* (1929) 207 Cal. 221, 224.) The judgment roll consists of certain pleadings, orders, and other papers filed in the superior court, but it does not include reporter's transcripts. (Code Civ. Proc., § 670, subd. (b).) "The issue of whether a judgment is void on its face is a question of law, which we review de novo." (*Calvert v. Al Binali* (2018) 29 Cal.App.5th 954, 961.) We also review

de novo the interpretation of statutes. (*In re Marriage of Lusby* (1998) 64 Cal.App.4th 459, 474.)

A. Statutory Violation

Mother contends that the trial court's failure to provide a statement of reasons under Family Code section 4056, subdivision (a),[1] justifying departure from the guideline child support amount renders the 2005 order void on its face. Because the statement of reasons could have been provided orally on the record, we conclude that the 2005 order is not void on its face.

"The amount of child support normally payable is calculated based on a complicated algebraic formula found" at section 4055, which is typically referred to as the statewide uniform guideline. (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1047.) Parents are permitted, subject to the approval of the court, to agree to modify child support below the guideline amount. (§ 4065, subd. (a).) Parents who stipulate to support below the guideline must declare that "they are fully informed of their rights concerning child support, that they agreed to the order without coercion or duress, that the agreement is in the best interests of the children, that the needs of the children will be adequately met by the stipulated amount, and that the right to support has not been assigned to the county." (*In re Marriage of Laudeman* (2001) 92 Cal.App.4th 1009, 1013-1014 (*Laudeman*); § 4065, subd. (a).)

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1 All further statutory references are to the Family Code unless otherwise indicated.

If the child support award differs from the guideline amount, the court has a sua sponte obligation to "state, in writing or on the record, (1) the amount of support that would have been ordered under the guideline formula; (2) the reasons the ordered amount of support differs from the guideline formula amount; and (3) the reasons the ordered amount of support is consistent with the best interests of the children." (*Laudeman*, *supra*, 92 Cal.App.4th at p. 1014; *Y.R. v. A.F.* (2017) 9 Cal.App.5th 974, 984 (*Y.R.*); § 4056, subd. (a).) To satisfy the requirement, "[t]he trial court must articulate why the deviation is in the child's best interest." (*S.P. v. F.G.* (2016) 4 Cal.App.5th 921, 935.)

Mother argues that the 2005 order is void on its face because it provides for below-guideline support but does not include the required statement of reasons. Father's first argument in response is that we must presume that the award in the 2005 order is the guideline amount because the order does not state that it represents a departure from the guideline. Father does not cite any authority for this proposition, and we reject it. The 2005 order includes the appropriate declarations from the parties under section 4065, subdivision (a), for below-guideline support, and the 2005 order provides for child support below the 2002 amount, which the parties concede was the guideline amount. We therefore presume that the 2005 amount was understood and intended by the parties and the court to be below the guideline amount.

Mother's argument that the 2005 order violates section 4056 fails for a different reason, however. Section 4056 provides that when departing from the guideline, the court "shall state" its reasons either "in writing or on the record." (§ 4056, subd. (a).)

The 2005 order does not state that no hearing was held, and the judgment roll (or at least the portion that has been included in the record on this appeal) likewise does not show that no hearing was held. Accordingly, we cannot confirm from the judgment roll that the required statutory findings were not made—the court might have made them orally on the record, which would satisfy the statutory requirements. Because the judgment roll thus does not show that the alleged statutory violation occurred at all, mother has not shown that the 2005 order is void on its face on account of the alleged statutory violation.[2]

In addition, even if the judgment roll did show that the 2005 order was not preceded by a hearing on the record (and thus that the required findings could not have been made orally on the record), the trial court's failure to provide the statement of reasons would, at most, amount to an act in excess of the court's jurisdiction and thus render the order voidable, not void. "'Action "in excess of jurisdiction" by a court that has jurisdiction in the "fundamental sense" (i.e., jurisdiction over the subject matter and the parties) is not void, *but only voidable*.'" (*In re Marriage of Murray* (2002) 101 Cal.App.4th 581, 599.) There is no dispute that the court in 2005 had jurisdiction over the subject matter and the parties. Errors that are merely in excess of the court's jurisdiction are generally not subject to collateral attack. (*People v. American*

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[2] It is not clear from the parties' statements in the trial court or on appeal whether the parties contend that the 2005 order was entered following a hearing on the record, but some of the parties' statements suggest that such a hearing did take place. The record on this appeal does not include a reporter's transcript of that hearing, if it did take place. And as already noted, if the putative defect in the 2005 order cannot be shown without resort to the reporter's transcript, then the 2005 order is not void on its face.

Contractors Indemnity Co. (2004) 33 Cal.4th 653, 661.) The time has long passed for the 2005 order to be set aside as voidable. (Code Civ. Proc., § 473, subd. (b) [six-month deadline for setting aside voidable orders].)

For all of these reasons, we reject mother's argument that the 2005 order must be set aside as void on its face because it violates section 4056.

B. Public Policy

Mother further contends that the 2005 child support award is void as against public policy because (1) it constitutes a de facto waiver of child support, and (2) it gives father an incentive not to visit the child. California does have strong public policies favoring adequate child support (*In re Marriage of Macilwaine* (2018) 26 Cal.App.5th 514, 528) and ensuring that minor children have "frequent and continuing contact with both parents" (§ 3020, subd. (b)). We nonetheless conclude that mother's argument lacks merit.

The 2005 child support award did not waive child support. The 2005 order authorized mother to move to New Zealand, but it did not require her to move there or to stay there. Had mother remained in California (or returned to California after moving elsewhere), the child could easily have visited father in California every month, triggering monthly child support payments of $600.[3] Because it was entirely within mother's power to satisfy the condition that would entitle her to $600 per month in child

[3] Although there is no evidence in the record about where mother lived after the 2005 order's entry, we note that father's attorney stated at the hearing that mother and child lived in New Zealand for only one year and then moved to Florida.

support, we conclude that the 2005 order did not operate as a waiver of child support. The 2005 order therefore was not void as against public policy on that basis.

For similar reasons, we conclude that the 2005 order did not violate public policy by giving father a financial incentive not to visit the child. Although the order did give father a financial incentive not to visit the child *in California*, father could still visit the child *anywhere else* (including New Zealand) without triggering an obligation to pay child support. Moreover, *the 2005 order gave mother a financial incentive to make the child available for visitation with father in California*. In that respect, the order actually supported the public policy in favor of visitation with father. In making the 2005 order, the trial court had to balance all of these competing considerations, and doubtless others as well. It is impossible to conclude from the judgment roll that the balance struck by the trial court in the 2005 order was so hostile to father's visitation as to render the order void as against public policy.

For all of these reasons, we conclude that the 2005 order is not void on its face as against public policy.

DISPOSITION

The order of October 3, 2017, denying mother's motion to set aside is affirmed. Respondent shall recover his costs of appeal.

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MENETREZ
J.

We concur:

RAMIREZ
P. J.

MILLER
J.